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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/721,664

11/25/2003

Tetsuya Fukuda

9281-4714

5952

7590 02/06/2007  
Brinks Hofer Gilson & Lione  
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EXAMINER

PETKOVSEK, DANIEL J

ART UNIT

PAPER NUMBER

2874

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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2 MONTHS

02/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/721,664	Applicant(s) FUKUDA ET AL.	
	Examiner <i>Dep</i> 1/31/07 Daniel J. Petkovsek	Art Unit 2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed January 18, 2007.
- 2a) ☐ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7-10 and 13-32 is/are pending in the application.
- 4a) Of the above claim(s) 30-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3-5, 7-10, and 13-29 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This office action is in response to the amendment filed January 18, 2007. In accordance with the amendment, claims 1 and 8 have been amended, new claims 30-32 have been added, while claims 2 and 6 have been formally canceled (claims 11 and 12 previously canceled).

Claims 1, 3-5, 7-10, and 13-29 are pending (claims 30-32 have been withdrawn based upon restriction by original presentation).

#### *Election/Restrictions*

1. New claims 30-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the amended/newly claimed invention is a distinct embodiment from the embodiment treated in the prior office action. For example, the claim language “wherein the opening of each hole has a polygonal shape and *the polygonal holes are closely formed to decrease the connection surface between the openings*” was not originally presented. The new claims 30-32 as presented encompass a distinct and new embodiment from the originally claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30-32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Accordingly, claims 1, 3-5, 7-10, and 13-29 are presently under consideration.

The basis for restriction to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1, 3-5, 7-10, and 13-29, drawn to an anti-reflective structure with particular properties including a ratio of the openings to the first surface set to 70% to 85% per unit area, and further that the openings are disposed in a staggered arrangement to the first surface, classified in class 385, subclass 146.
- II. Claims 30-32, drawn to an anti-reflective structure with particular properties including having an opening of each hole having a polygonal shape and the polygonal holes being closely formed to decrease the connection surface between the openings, classified in class 385, subclass 146.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as having patentably distinct limitations including the opening of each hole having a polygonal shape and the polygonal holes being closely formed to decrease the connection surface between the openings. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claims depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is

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anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

***Allowable Subject Matter***

3. Claims 1, 3-5, 7-10, and 13-29 are allowed. The following is an examiner's statement of reasons for allowance: the relevant prior art does not teach or reasonably suggest the claimed anti-reflective structure, in combination, and further which includes both the ratio of the openings to the first surface set to *70% to 85%* per unit area, and also that the openings are disposed in a *staggered arrangement* to the first surface. These specific limitations are viewed as being novel over all cited prior art of record.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

5. This application is in condition for allowance except for the following formal matters: claims 30-32 must be formally canceled.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Petkovsek whose telephone number is (571) 272-2355. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel Petkovsek  
January 31, 2007



SUNG PAK  
PRIMARY EXAMINER